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SUBJECT : Conversations with Leading Officials of
Uruguay's Military Court System

REF : MONTEVIDEO A-76

The enclosed memcom covers a conversation held between an Embassy Officer and Colonel Dr. Federico SILVA Ledesma, President of the Supreme Military Tribunal and Captain (Navy) Alberto A. FALCO, one of the five members of the Tribunal. The Tribunal is the court of appeal for the lower courts of the military justice system and, under Uruguay's Code of Organization of Military Tribunals, it has direct supervision over all the functions of military justice. Detailed comments on the topics covered will be included in a separate airgram on the judicial processing by Uruguay's military court system of persons accused of terrorism, subversion, and other "crimes against the nation."

PEZZULLO

Enclosure:

Memorandum of Conversation

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MEMORANDUM OF CONVERSATION

PARTICIPANTS: Colonel Dr. Federico SILVA Ledesma, President
of the Supreme Military Tribunal

Captain (Navy) Alberto A. FALCO, Member of
the Supreme Military Tribunal

John P. Londoño, Political Officer
Embassy MONTEVIDEO

DATE & PLACE: August 17, 1977, Supreme Military Tribunal

Organization of Military Court System

In a short prior conversation before Colonel Silva appeared, Captain Falco explained that the Supreme Military Tribunal is made up of three Army members (including Col. Silva), one Air Force member, and one Navy member. He said that the Tribunal is the appeals court for all the lower military courts and under Article 76 (4) of the Code of Organization of Military Tribunals it exercises "direct supervision -- correctional, consultative, and economic -- over all the functions of military justice". Thus, he stated, it is the Tribunal that disciplines any lower court military judges who have committed any infractions. He said that the only member of the Tribunal who is a lawyer is Col. Silva himself and that the Court cannot hold sessions without his presence or the presence of a military judge who is a lawyer.

Silva then appeared and I told him I wanted to ask a few questions on the military justice system because of questions that had come up concerning it. He said he was willing to answer these questions. He stated that his experience with the military justice system goes back to the passage of the Law of State Security and Internal Order in July 1972 (hereinafter referred to as the National Security Law). He stated that ^{up to 1974} he was one of three military judges of instruction (the lower military court judges who handle the arraignment of persons accused of "crimes against the nation"; the military judges of primary instance handle the trial and sentencing stages). He went on to say that while the National Security Law provides for doubling the number of military judges of instruction (to six), the three new judges did not start working until the beginning of 1973.

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He said that in 1972 he personally had handled approximately 950 cases of persons accused of "crimes against the nation"; that only in 1973, when the period of danger was over, did the three new judges start functioning. In 1973 he personally handled 100 such cases. He emphasized that in addition he had had to handle those cases of military personnel that involved strictly military crimes.

Silva said that it was for this reason that there had been so many delays in the judicial processing of persons accused of "crimes against the nation". He added that what delays existed now were of a strictly minor nature and that one military judgeship of instruction was now vacant and might be abolished.

The Initial Processing of a Person Accused of a "Crime Against The Nation"

Silva stated that the Military Penal Code and the Ordinary Penal Code share the same legal precepts. Nevertheless, he said that the Uruguayan Congress in February 1973 first passed a law permitting the authorities to hold a person accused of a crime against the nation for ten days before bringing him before a judge; this of course runs counter to the provision of the Uruguayan Constitution that states that a person accused of a crime must be brought before a judge within 24 hours and that the legal process against him must start within 48 hours in the presence of the accused's attorney. Silva said that because of the large numbers of people who were initially detained after the passage of the National Security Law, in practice for some time it was not possible to honor this ten day requirement. Silva said that this requirement, because of the lower number of people being detained, is today being honored in practice.

If the ten days is not honored, he said that he had had family members of people who had been detained come to him and ask for a writ of habeas corpus. (Comment: According to the Embassy's information, the writ of habeas corpus was suspended for persons accused of "crimes against the nation.") He said he personally had had 12 such cases in two years and that the writ had been granted. I remarked to Silva that I assumed that in these cases the family members had had an idea of the detainee's whereabouts. Silva said that this was so. I asked what happened in the case of people who had been detained longer than ten days and whose whereabouts were not known by their family members. Silva admitted that in such a case, of course, he could do nothing because a writ of habeas corpus has to be directed to a specific military authority.

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Silva also said that the judge of instruction is not called in until police and military authorities have completed their investigation of the detainee. When the police and military authorities feel they have sufficient proof against the detainee, only then, Silva said, do they come to the military judge of instruction, who evaluates the evidence previously gathered against the detainee and can call for further evidence before arraigning the suspect. I then commented, that there was thus no judicial authority with supervision over the preliminary investigation of a crime. Silva admitted that this was so, but said that if the situation were otherwise the judge of instruction would be hopelessly inundated if he had to handle the preliminary investigation as well as the arraigning process of a suspect.

Use of Confessional Evidence

Silva said that in many cases the judge of instruction does not have to do all that much in terms of evaluating the evidence because of the large number of confessions that occur before detainees are brought in for arraignment. He said that in 1972, of the 950 cases of procesamiento he had handled he had only one in which the accused had not previously confessed before being brought before him. He said that the particular individual who had not confessed was Lucia Michelini, daughter of ex-Senator Zelmar Michelini (who was killed in early 1976). Silva said that Lucia Michelini had refused to answer all questions, even including what time of day it was, whether she was thirsty, etc. Nevertheless, he said that sufficient witnesses to her crime of subversion had been brought forth, and she had been tried and sentenced and the conviction upheld on appeal to the Supreme Military Tribunal and from there to the Supreme Court of Justice.

I asked what happened if an arraigned person or procesado sought to retract his confession. Silva said that if a person sought to retract his confession the judge could order an investigation. He said he had a recent case in May when a detainee was so severely beaten he had to be put into a hospital and had retracted his confession; he went on to say that a Lt. Colonel, two Captains, and a Lieutenant had forced him to confess. He said that the Lt. Colonel is now in jail and that the other officers involved in this particular case had been severely punished. In fact, Silva said, the evidence on this particular case had been among the restricted military information found on Tavares, the journalist for the Mexican newspaper Excelsior and the Brazilian newspaper O Estado de Sao Paulo. I asked Silva why publicity had not been given to this case; that such an example would help to counter

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many of the allegations coming from abroad concerning human rights violations in Uruguay. Silva said no publicity could be given to the case until final sentences had been passed on the people involved, something that he said had not yet occurred.

Legal Defense of the Accused

Silva said that only when the accused is before the military judge of instruction was an attorney for the accused brought forth. He said the accused could either request his own attorney or the judge of instruction could grant him one. As of right now, Silva said there are three colonels, without law degrees, who can be classified as official military defenders and that three civilian lawyers are also at the disposal of the judges of instruction to defend accused persons. Silva remarked that the detainees increasingly prefer to have military defenders appointed for them by the judges; such defenders do not have to be trained lawyers. He said that only the leaders of the subversive groups seem to prefer to hire civilian lawyers from outside the military justice system. He added that one of the reasons there are more military officers defending detainees than regular civilian attorneys is because of economic factors. He said the accused, of course, do not have to pay for military defenders.

I told Silva I had heard that defense attorneys could be restricted to the extent that military judges often turn down the request for evidence favorable to their clients to be put into the evidenciary record. Silva replied this is the so-called ampliación de dossier wherein a defense lawyer, after reviewing the evidenciary record leading up to his client's arraignment, has six days to review the record and then ask the military judges of instruction for further proof to be introduced into the evidenciary record. Silva said that this request for "an increase of proof" can be made by the defense attorney not only at the arraignment stage, but also at the trial and appeals stages. However, he said, if the defense attorney made such a request at the appeals stage before the Supreme Military Tribunal, he had to present justification for the additional evidence, in addition to the formal request. He added that if the request for additional proof is granted, the defense attorney has up to two or three months to gather such evidence to be put into the evidenciary record.

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However, he admitted that many such requests for an ampliación de dossier are turned down because of what he called the "exaggerated" demands for evidence often made by defense lawyers. He recalled one recent case where a defense attorney, defending an accused member of the Uruguayan Communist Party (PCU), had requested that all evidence concerning the history of the PCU activities in Uruguay be included in the evidentiary record. Silva said of course this request had been turned down.

Increase of Sentences on Appeal

I referred to a case that had been given wide publicity in Uruguay many months ago concerning the appeal of an ex-military officer named Martinez, who had been convicted of passing military information to the Tupamaros. I said some of the people in the Embassy had been surprised, to say the least, not so much that the appeal was turned down but that his sentence had been increased by the Supreme Military Tribunal. Silva said that just as the defense is permitted at all stages to request an increase in proof, the fiscal, or prosecutor, and the judge, if they run into errors in the lower courts, or find proof that the accused has committed a greater crime than the one listed in the original procesamiento, can ask for an increase in the sentence. Silva admitted there is a great deal of controversy over this among Uruguayan lawyers and judges and that even the civilian judges are divided on the question as to whether sentences can be increased on appeal. He said there is no express constitutional prohibition against increasing sentences on appeal, and he thought the majority of civilian judges were swinging over to the opinion that sentences could be increased. Captain Falco said that Article 31 of the Military Penal Code states: "The judge determines the sentence which in his judgment fits the crime, taking into account the maximum and minimum limits of punishment established by law, and taking into account the number and quality, especially the quality, of extenuating and aggravating circumstances." Silva then remarked that the people who had been basically opposed to having sentences increased on appeals had been those civilian lawyers who had defended accused subversives.

Silva stated that almost all the proceedings in both the civilian and military court systems are written. However, he added that in the military court system there are provisions for an oral presentation of evidence in a proceeding open to the public and press in the appeals process before the Supreme Military Tribunal.

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I asked if the Supreme Military Tribunal often held such open proceedings. Both Silva and Falco replied that it was up to the Tribunal itself to say whether or not these proceedings would be open. Silva admitted that due to both limitations of time and space, and to the often lengthy procedural requirements of the appeals process, it was not always possible to have such open hearings.

Silva said that an appeal of a decision rendered by the Supreme Military Tribunal could be made to the Court of Justice, formerly known as the Supreme Court of Justice. He said in such cases two military officers had to sit along with the civilian justices in the deliberations of such cases. Silva remarked that it was not necessary that the two military members, who sit with the Supreme Court on such cases, be trained lawyers, but one of them, Air Force Col. Hermes Sosa Illa, is a trained lawyer.

Supervisory Powers of the Supreme Military Tribunal

I remarked to Silva that Capt. Falco had been telling me about the supervisory powers that could be exercised by the Supreme Military Tribunal over the military judges in the lower military courts. Silva said this was so, that the Supreme Military Tribunal had even deprived judges of their positions for infractions of the military justice system. I asked if any judges had been removed, or otherwise disciplined for any irregularities they may have committed in the judicial process of persons accused of "crimes against the nation". Silva said this had not occurred and that he had received no complaints about actions of the judges of instruction or the judges of primary instance. In fact, he argued many accused persons preferred to be tried by military judges rather than civilian judges and recalled one instance in 1972 when a Tupamaro asked to be brought before him rather than a civilian judge of instruction.

He said that since becoming President of the Supreme Military Tribunal in 1974, he had sought to increase the professionalization of the military court system by obtaining legal training for military officers who, after graduating, would then serve for a specified time with the military court system as legal aides to the military judges. He remarked that right now many law students were acting in the capacity of assistants to military judges, and he hoped this situation could be remedied within ten years' time. As of now, he said, there are five judges of instruction and five judges of primary instance, and it was his hope that each one of these could eventually have a trained legal aide to help him out along with the trained civilian lawyers who presently help out as assistants to the judges.

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Release of Detainees

I said there had been some allegations made to EmbOffs that when a military judge found the evidence against an accused insufficient and ordered his release, often the military authorities in charge of the accused refused to obey the release order. I said I had heard this, particularly in cases where, for instance, an Army judge had ordered a person in the custody of the Naval authorities to be released, or in cases where a judge in Military Region No. 1 ordered the release of a person being held in another military region. Silva said there had been instances, in doubtful cases, where a lower ranking military officer receiving such an order had refused to obey the release order until his commanding officer reviewed the order. He said this often occasioned delays in the release of prisoners. He said the problem was greatest in the interior but that within Montevideo such delays were never more than 24 hours. He said he himself had received several calls from family members of detainees on whom there had been a release order issued and that he himself had called the authorities to find out why such persons had not been released. He admitted there was a problem with respect to delays on getting release orders obeyed, but the problem was not too serious. He said the Supreme Military Tribunal had so far during 1977 ordered the release of eighty-nine persons.

Amnesty International

Silva said it was he who had talked to the team of Amnesty International and the International Commission of Jurists who visited Uruguay in 1974. He said he had been open and frank with the team, but that they had taken his remarks and put them together in such a way as to create a negative picture of the military court system. He said that as a result of this experience he would never again trust an international organization like Amnesty or the International Commission of Jurists. Silva emphasized the heavy infiltration that occurred in the early 1970's by extreme leftist elements of the civilian judiciary, thus necessitating turning over to the military court system the judicial processing of terrorists and subversives and other persons accused of crimes against the nation. He said that such an infiltration, which had occurred in other walks of life in Uruguay, specifically the schools, had been part of a long-range plan of infiltrating civilian institutions by communists and other extreme leftist elements. He said he did not think the U.S. fully understood the situation that had occurred and the steps that had been taken to remedy it.

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NOTE: After my interview with Silva and Falco, I talked with Colonel Sosa for about an hour. Sosa is one of the military officers who sits with the Court of Justice when military cases are being heard. He made many of the same points that Silva and Falco had made, placing particular emphasis on the fact that the Ordinary Penal Code and the Military Penal Code had been authored by the same judicial authorities and that the same legal concepts underly both.

COMMENT: Silva appeared to be an articulate spokesman for the GOU point of view. He is the brother-in-law of General Gregorio ALVAREZ. His wife, Dra. Aurora Alvarez de Silva Ledesma, is Second Vice President of the Council of State and Vice President of the Council's Commission of Respect for Individual Rights, the body that is supposed to receive and monitor complaints concerning human rights violations.

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